UNITED STATES OF AMERICA BEFORE
THE NATIONAL LABOR RELATIONS BOARD

In the matter of United Government Security Officers of America International and its Local 129, Respondents, and Joseph Anthony Farrell, an Individual, Charging Party, and David Wehrer, an Individual, Charging Party	Case No. 04-CB-192246 04-CB-208578 04-CB-207347

BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF THE UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA AND ITS LOCAL 129

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I. STATEMENT OF THE CASE

United Government Security Officers of America International Union ("International"), United Government Security Officers of America, Local 129 ("Local") (collectively, "Respondents") and Akal Security, Inc. ("Akal" or "Employer") were parties to an October 1, 2015 to September 30, 2018 collective bargaining agreement (Joint Exhibit 1) covering a bargaining unit of court security officers ("CSOs") and lead court security officers ("LCSOs") providing security services to the federal courts in Scranton, Pennsylvania.[1] On February 12, 2018, the General Counsel issued a consolidated complaint (General Counsel Exhibit 1(p)) alleging (1) that Respondents breached their duty of fair representation by failing to file a grievance concerning the reinstatement of Joseph Farrell's past seniority in violation of Section 8(b)(1)(A); (2) that the Local attempted to cause the Employer to discipline David Wehrer in violation of Sections 8(b)(2) and 8(b)(1)(A); and (3) that the Local attempted to cause the Employer to discipline Farrell in violation of Sections 8(b)(2) and 8(b)(1)(A).

On March 5, 2018 and April 30, 2018, by telephone, a hearing was held on those allegations before Chief Administrative Law Judge Robert A. Giannasi ("ALJ"). On June 4, 2018, the ALJ issued his decision ("ALJ Decision") finding that Respondents violated Section 8(b)(1)(A) with respect to the failure to restore Farrell's past seniority and that the Local violated Sections 8(b)(2) and

[1] On or about December 1, 2017, Paragon System ("Paragon") replaced Akal as the employer of employees within the Local 129 bargaining unit. (Parties' Stipulations, at ¶ 2). Respondents will refer to Paragon and Akal interchangeably as "Employer."

8(b)(1)(A) by attempting to cause the Employer to discipline Farrell. The ALJ dismissed the allegation that the Local violated Sections 8(b)(2) and 8(b)(1)(A) by attempting to cause the Employer to discipline Wehrer.

Based thereon, and pursuant to 29 C.F.R. § 102.46(a), Respondents submit this brief in support of their Exceptions to the ALJ's finding that Respondents violated Section 8(b)(1)(A) with respect to the failure to restore Farrell's past seniority.

II. FACTUAL BACKGROUND

Contracting employers employ and provide CSOs to the United States Marshal Service ("USMS" or "Marshal Service") to perform security services in the federal courthouses. (Tr, Kamage, 12: 12-15). Typically, the Marshal Service's security contract is rebid every 3 to 4 years. (Tr, Kamage, 12: 16-18). Applicants for CSO positions apply directly to the Employer. (Tr, Kamage, 13: 6-25; 14: 1-11).[2]

The collective bargaining agreement between the Respondents and Employer has contained the following provisions pertaining to seniority for bargaining unit members:

Article 2 - Union Seniority

Section 2.2 – Termination of Seniority

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[2] Applicants are subjected to an extensive screening process. First, the Employer screens applicants and conducts interviews. When a vacancy arises, the Employer again screens applicants and then submits applications to the Marshal Service. The Department of Homeland Security ("DHS") and the Office of Personnel Management ("OPM") both conduct background investigations. (Tr, Kamage, 13: 6-25; 14: 1-11; 15: 1-3).

The seniority of an Employee shall be terminated for any of the following reasons:

A. the Employee quits or retires;

B. the Employee is discharged for just cause;

C. a settlement with the Employee has been made for total disability, or for any other reason if the settlement waives further employment rights with the Employer;

D. the Employee is laid off for a continuous period of one hundred eighty (180) calendar day;

E. the Employee is permanently transferred out of the bargaining unit.

Section 2.3 - Reinstatement of Seniority

The seniority of an Employee shall be reinstated for any of the following reasons:

A. An Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire;[3] and

B. An Employee returned to work after overturning a discipline termination shall regain their seniority back to original date of hire.

(Joint Exhibit 1).

Robert Reuther, a CSO in Scranton, was released from his position in June 2008 by the then-contractor MVM, Inc. following an on-the-job injury. Reuther was re-hired as a CSO in March 2012. (ALJ Decision, at 5).

When Reuther returned to work, he did not receive union seniority for about a year. (Tr. Kamage, 68: 23-24; 69: 11-17). In 2012, Reuther sent a

[3] The ALJ, in independently interpreting the contractual language of Section 2.2 as narrowly as possible, fails to acknowledge that the specific conditions set out in Section 2.3 must fall under at least one of the conditions triggering an employee's loss of seniority in Section 2.2.

request for assistance to Jeffrey Miller, Director for the International, regarding his seniority. (General Counsel Exhibit 8). Reuther also sent Miller text messages requesting Miller's assistance regarding his seniority starting on January 23, 2013. (Joint Exhibit 8). Miller replied to the initial request, "I will update the company and try to get a response but I want to be clear that no one from the local will protest your seniority reinstatement." (Joint Exhibit 8). On January 28, 2013, Reuther responded that he had spoken to everyone who would be impacted by his seniority reinstatement and that no one had a problem with it. (Joint Exhibit 8).

Thereafter, Miller emailed Maureen Dolan, Labor Relations Specialist for the Employer, on February 5, 2013 requesting restoration of Reuther's union and benefit seniority, writing, in part,

> He was hired as a CSO November 8, 2004, he suffered an on the job injury May 5, 2007 while working for US Protect and was placed on Workman's Compensation, [sic] He then received notification that he was being "released without prejudice on June 9, 2009 by the current contract MVM, Inc. while still on an active Workman's Compensation Case . . . .
>
> Pursuant to Article 2 Section 2.3 of our current agreement, an Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.

(General Counsel Exhibit 16). Dolan replied that the collective bargaining agreement did not come into play as Reuther's hire date predated the contract. Dolan indicated that the Company would not object to restoring Reuther's union seniority but would not restore his benefit seniority. (General Counsel Exhibit 16). On February 8, 2013, Miller emailed Dolan further contending

that Reuther should have never been fired while on worker's compensation leave and, if never fired, he would be eligible for commensurate benefits. (General Counsel Exhibit 29).[4]

When asked, George Kamage, the Employer's District Supervisor, did not object to the return of Reuther's seniority and took no position on the matter because it was his opinion that it constituted a "union issue." (Tr, Kamage, 16: 6-15; 17: 1-4). While the ALJ has relied on Kamage's testimony to conclude that union seniority was entirely within the discretion of Respondents,[5] Kamage admitted at hearing that he had no role in administering the collective bargaining agreement. (Tr, Kamage, 58: 11-15).[6] In 2013, Reuther's union seniority was restored, but Reuther was never given his benefit seniority. (Tr,

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[4] The ALJ, in his decision, cites Miller's February 8, 2013 email as concerning Reuther's union seniority exclusively. (See ALJ Decision, at 5). It is clear from the sequence of communications that Miller was, by February 8, 2013, attempting to argue that the Employer should restore Reuther's benefit seniority. Reuther's benefit seniority was never restored by the Employer. (Tr, Kamage, 17: 6-18).

[5] The evidence clearly demonstrates that the Employer controls the union seniority list. Although Dolan was willing to make a change to Reuther's seniority, Respondents could not simply change the list without the Employer's consent and action. (General Counsel Exhibits 16 & 20).

[6] At hearing, Kamage testified clearly (Tr, Kamage, 58: 11-15) that he had no involvement whatsoever in administering the collective bargaining agreement:

> Q. Do you have responsibility for implementing the collective bargaining agreement?
>
> A. No.
>
> Q. None at all?
>
> A. None whatsoever, sir.

Kamage, 17: 6-18). In 2015, a grievance was filed regarding the Employer's failure to restore Reuther's benefit seniority but neither the Local or International pursued it to arbitration. (Joint Exhibit 12, at ¶ 11).

On March 1, 2013, Joseph Farrell, the then Secretary/Treasurer for the Local and a senior LCSO within the bargaining unit, emailed Miller vigorously objecting to the restoration of Reuther's seniority:

> I am sending this email not only as a union official of Local 129, but also as a bargaining unit member who is adversely affected by this reinstatement of seniority. As I had indicated to you in our telephonic conversations, this action by the International was never discussed nor endorsed by the body of Local 129. . . it appears the International may have acted on behalf of one bargaining unit member, Bob Reuther, absent the approval of the Local.
>
> The decision both to request and grant seniority to Bob adversely impacts five members of the bargaining unit. In this time of impending layoffs, I can say with absolute certainty that of these five, at least two persons, myself and Joseph Williams intend to request the assistance of both the local and International in overturning this action. Certainly there was no transparency in the actions taken, and as I had advised you previously that I, as a union official, was unaware of the actions until I was copied on an email after the decision was rendered.

(General Counsel Exhibit 16). On March 4, 2013, Miller sent a text message to Reuther regarding the situation stating, in part, "you told me everyone at the local was on board with this plan and now I am being accused of not doing the right thing, I took your word that all was ok and now that does not appear to be the case[.]" (Joint Exhibit 8). Reuther responded, "Well i spoke to people individually and nobody had a problem. Whether they thought i wasnt going to get it or what but i didn't deceive u and my word IS good[.]" (Joint Exhibit 8).

On March 6, 2013, Farrell again emailed Miller regarding the restoration of Reuther's seniority further challenging the action as contrary to the terms of the collective bargaining agreement:

> I am in the process of preparing a grievance for submission to the District Supervisor on this matter. In the interim, I would ask that you contact Maureen Dolan and request that she immediately rescind her directive which reinstated Robert Reuthers seniority until there is time for further investigation by both the Local and International. I submit that your initial request to her was done in error . . . .
>
> The situation which has unfolded has placed the improper burden of proof upon any party who elects now to grieve the seniority restructuring. The CBA is very well defined in this regard, and I believe it was circumvented without due regard for all members rights under the CBA. . . .
>
> Secondly you indicate: *Pursuant to Article 2 Section 2.3 of our current agreement, an Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.*
>
> I do not believe that Bob Reuther ever received a medical disqualification from the FOH or the USMS. I submit my belief that there was never a medical disqualification to overturn. . . .
>
> I hope that you understand not only my position, but also that of the other aggrieved parties. It is unfortunate that this situation has occurred, however I can assure you that had this issue been properly discussed and voted upon we would not be a this junction. . . .
>
> In the interim I will move forward with the grievance. . . .

(General Counsel Exhibit 16).

While Secretary/Treasurer, Farrell processed a grievance regarding time fraud allegations against several officers who purportedly came in and left early. (ALJ Decision, at 3). According to Farrell, Miller evaluated the grievance, determined that it was without merit, and that it would cost the

Local $2000 per person. (Tr, Farrell, 78: 13-25). The grievance was not processed because Local officials felt that the matter was too costly to bring to arbitration. (Tr, Farrell, 79: 6-15). Wigley and Reuther complained about the failure to support them in the grievance. (ALJ Decision, at 5).

In 2014, Farrell was hurt at work and went out on worker's compensation leave. (Tr, Kamage, 50: 23-25; 51: 1-4). The Marshal Service maintains requirements that CSOs be medically capable of performing their jobs and, at that time, required CSOs to undergo a yearly physical examination. (Tr, Kamage, 50: 7-16; 50: 20-21; Miller, 168: 2-12). The Marshal Service can disqualify employees from being employed under the Employer's contract with the Marshal Service. (Tr, Kamage, 55: 1-14).

In 2014, Farrell contacted Kamage regarding his annual physical and Kamage "advised [him] that there would be no physical, that [he] **wouldn't be allowed** to take a physical because [he] was out on workmen's compensation." (Tr, Farrell, 80: 11-18) (emphasis added).[7] As Miller and Kamage credibly

[7] Farrell's actual testimony is strikingly different from the ALJ's factual findings drawn from it: "District Superintendent Kamage specifically told Farrell that he was excused from taking the physical while he was on workmen's compensation" and "Despite the fact that Farrell's original removal letter mentioned the lack of a physical, Farrell was specifically excused from taking his annual physical while he was on workmen's compensation." (ALJ Decision, at 7 & 20). Instead, Kamage told Farrell they were not going to permit him to have the physical not that the Marshal Service's requirement, which the Employer and, therefore, Kamage did not control, was somehow waived or excused. In an email to Respondents following the settlement of his grievance, discussed infra, Farrell indicated that the Employer had refused to provide him with a medical examination resulting in his termination. (General Counsel Exhibit 14) ("AKALS refusal to provide me with my annual medical examination, and then terminate my employment under the contract based on

testified at hearing, the Marshal Service does not waive the annual examination requirement for CSOs on worker's compensation leave. (Tr, Miller, 172: 11-14; Kamage, 53: 10-12; 55: 24-25; 56: 1-6).[8]

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that lack of examination, certainly flies in the face of the letter and spirit of the CBA. . . .").

[8] The ALJ concluded that Farrell's employment was not affected by his failure to take an annual physical examination finding that Kamage excused Farrell from the requirement for a physical. (ALJ Decision, 7). The ALJ's finding has no basis in the record. Although citing to portions of the transcript covering Kamage's testimony (Tr, Kamage 53-58), Kamage never indicated that Farrell was exempt from the physical or that the failure to have a physical had no impact on his employment. Rather Kamage testified (Tr, Kamage, 53: 10-12; 55: 24-25; 56: 1-6), to the contrary:

> Q. So as of this date, he was no longer a court security officer; isn't that correct?
>
> A. That is correct
>
> . . . .
>
> Q. Okay. He couldn't have the physical because of that. But everyone is required to have a physical in a 12-month period right?
>
> A. Yes, sir, yes.
>
> Q. Regardless of whether they're on medical leave or not.
>
> A. Yes.
>
> Q. Or they can be disqualified.
>
> A. Yes.

Despite the ALJ's tortured efforts to force the record to conform to his conclusions, as set out infra, the evidence overwhelmingly shows that Farrell's employment was impacted by his lack of a physical. The Marshal Service contacted the Employer about Farrell's lack of physical indicating it violated the Employer's contract with the Marshal Service (General Counsel Exhibit 25). The January 2015 letter sent to Farrell explicitly cites the lack of physical as

The Marshal Service notified the Employer that it was in violation of the requirement that each employee have an annual physical and disqualified Farrell because he did not have a physical within a year. (Tr, Kamage, 51: 11-21; 55: 19-22; 57: 1-6). On December 16, 2014, Kamage emailed Amanda Manzanares, writing that he had a discussion with Marshal Martin Pane who "pointed out that Farrell had not had a physical in over a year, November is his birth month, and believes that the company is now in violation of the contract because of this issue." (General Counsel Exhibit 25). As a result, the Employer removed Farrell from performing services under the contract and from his position as a CSO. (Tr, Kamage, 51: 22-25; 52: 1-2).

On or about January 14, 2015, the Employer issued a letter to Farrell stating, in part,

> As you are aware, since approximately March 21, 2014, you have been on a Medical Leave of Absence (LOA) status related to a Worker's Compensation claim. Your medical qualification has lapsed. Your last annual medical examination was taken on November 20, 2013. . . .
>
> As you are no longer qualified per contractual requirements, you are being removed from performing services under the contract and removed from the Court Security Officer (CSO) position effective today's date, January 14, 2015.
>
> When/if you are again available to perform work under the Contract, and based on the availability of a position, you may be required to repeat the USMS application process again to ensure your suitability and your qualifications for the position of a Court Security Officer.

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the reason he was removed from the contract and from his CSO position. (Respondent Exhibit 1).

(Respondent Exhibit 1).[9] Thus, as of January 14, 2015, Farrell was no longer a CSO and was no longer in the bargaining unit. (Tr, Kamage, 53: 10-15). To return to work as a CSO, Farrell would have to be cleared medically, reapply and be **rehired** by Akal. (Tr, Kamage, 54: 1-8) (emphasis added).

When an employee is removed from the contract, Kamage submits the name of an applicant to replace the employee as well as a CSO-001 form. (Tr, Kamage, 18: 17-24). The CSO-001 form includes Section 18(e) stating "Disqualified/Removed Due To: □ Medical Disqualification by FOH □ Failure of Weapon Test □ Failure to Provide Medical or Other Required Information □ Background Findings □ Performance Violation." (General Counsel Exhibit 2). Instead of utilizing those options, Kamage wrote "Workman's Compensation" on the form as directed by a superior although he was typically not supposed to write on the forms. (Tr, Kamage, 19: 15-17; 56: 23-25; 57: 1-8).

Farrell contacted Tim Crume, who at that time was an International representative assigned to the bargaining unit, sending him a copy of the January 14, 2015 letter. Crume did not know whether or not Farrell was terminated and recommended that he file a grievance. (Tr, Farrell, 81: 7-25). On January 20, 2015, Farrell requested that a grievance be filed regarding his wrongful termination, noting that the Employer had posted and filled his position as senior LCSO. (Respondent Exhibit 2). Thereafter, Crume filed a

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[9] Farrell testified regarding the contents of the letter, "and further it went on to say that as soon as I was able to return to work, that I could return to my position." (Farrell, 80: 20-25). The letter clearly offered no guarantee that Farrell could return to his position and the Employer, in fact, did not return him to that position.

grievance contending that Farrell was terminated without just cause. (General Counsel Exhibit 9).

The Employer responded to the grievance on or about February 17, 2015, writing, in part,

> As you know, this case is a lapsed qualification case and, under the terms of the CBA that USCSO [sic] has negotiated with Akal Security, the matter is explicitly excepted from the grievance procedure; thus it is neither grievable nor arbitrable. . . .
>
> Please note that Joseph Farrell is not currently credentialed to work as a CSO on a USMS contract. As such, Mr. Farrell was removed from the contract on January 14, 2015. His removal from the contract is not the Company's determination of disciplinary action and does not reflect a disciplinary action in the employee's personnel file. . . .
>
> Joseph Farrell is currently an employee of Akal Security, Inc. To return to the USMS contract, he will need to apply to an opening in the USMS program and go through the USMS credentialing process.

(General Counsel Exhibit 10). Crume forwarded the reply to Farrell on February 19, 2015 by email, with Crume writing, in part, "Your letter advised that you were 'removed' but this makes it clear that your employment has been terminated. This is a typical, standard denial letter from Akal." (General Counsel Exhibit 10).[10]

[10] If the Marshal Service disqualifies a CSO, the matter is not subject to arbitration although there is a governmental appeal process. (Tr, Miller, 172: 6-10). The International, however, processed Farrell's grievance to arbitration, even after the Company raised the Respondents' inability to arbitrate the grievance in its response, to provide it with leverage to engage in further discussion on the matter. (General Counsel Exhibit 24; Tr, Miller, 196: 7-9; see General Counsel Exhibit 10).

On May 13, 2015,[11] Farrell emailed Crume suggesting that the matter could be resolved based on certain conditions, writing, in part,

> 2. That my seniority would be reinstated in that it would be considered over turning a medical qualification. . . .
>
> I submit the only thing I wish to preserve are rights similar to those given to Robert Reuther, who received a workers compensation settlement after an alleged workers compensation injury, and was able to return to the position upon medical clearance with total seniority and able to jump over all applicants.

(General Counsel Exhibit 12). Crume did not respond to Farrell's concerns. (Tr, Farrell, 88: 18-19).

Farrell was medically cleared to return to work in April or May of 2015. (Tr, Farrell, 223: 15-19). Kamage reopened applications for the Scranton location in June 2015 and Farrell applied for a position.[12] At some point, Kamage had a conversation with Farrell during which Farrell contended that Kamage was engaged in a "deliberate ploy" not to re-hire him. (Tr, Kamage, 21:

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[11] In the interim, Farrell asked Respondents to provide him with local employment counsel, writing that Miller was aware "that the current leadership of the local union holds a personal animus towards me for certain union decisions that were made when I held the office of sec/tres." (General Counsel Exhibit 11).

[12] Likely to support his nonsensical conclusion that there was no change in Farrell's employment status when he was removed from his CSO position and he simply returned from a medical leave in October 2016, the ALJ found that "[i]t took almost a year after the events set forth above [September 2015 settlement agreement] for Farrell to obtain a medical clearance to return to work and for an open position to become available." (ALJ Decision, at 8). Such a finding is directly contradicted by Kamage and Farrell's testimony as set out supra notes 7 & 8. Further, the evidence shows that multiple vacancies existed between May 2015, when Farrell was medically cleared, and Farrell's return to work in October 2016. The Employer hired at least three CSOs at the Scranton location during that time frame including Joseph Gillott, June 18, 2015; Michael Martin, October 2, 2015; and John Colan III, June 20, 2016. (Joint Exhibit 10).

14-24). Kamage confirmed that Farrell again applied for a position sometime in September 2015. (Tr, Kamage, 21: 20-24).

Respondents and the Employer reached a settlement agreement on Farrell's grievance in September 2015. (General Counsel Exhibit 13). Farrell learned that the grievance was settled when he received a copy of the settlement agreement on September 16, 2015. (Tr, Farrell, 88: 22-23; General Counsel Exhibit 13). Thereafter, Farrell emailed Crume regarding the settlement agreement expressing dissatisfaction:

> As I had indicated to you, I do not agree with this resolution and was not consulted regarding the acceptance of this agreement prior to its implementation. My previous discussions with you revolved around immediate return to work upon medical clearance. Further we had discussed seniority upon return, similar to that obtained for Robert Reuther.

(General Counsel Exhibit 14). At hearing, Farrell confirmed that Respondents had ignored his request for seniority in resolving the grievance (Tr, Farrell, 90: 11-13), which as found by the ALJ, constituted "[t]he grievance and arbitration proceeding in which Respondents could have address the matter, but did not." (ALJ Decision, at 27).

On September 17, 2015, Robert Kapitan, then counsel for the International, replied to Farrell indicating that they had done all that they could for Farrell in the case and further advising Farrell that there was no appeals process. (General Counsel Exhibit 14). On September 17, 2015, Farrell responded to Kapitan writing, in part,

> AKALS refusal to provide me with my annual medical examination, and then terminate my employment under the contract based on that lack of examination, certainly flies in the face of the letter and

> spirit of the CBA. . . . I respectfully disagree that the Local and International Unions had done all they could for me on this case.

(General Counsel Exhibit 14) (underline added).

Prior to returning to work, Farrell had to re-apply for a position. (Tr, Farrell, 112: 17-20). Farrell elicited support from the International in attempting to return to work and Miller advocated for him. (Tr, Farrell, 112: 1-10). Miller called Sean Engelin, the Employer's Labor Relations Manager, concerning the issue as well as sending multiple emails. (Tr, Miller, 179: 13-25; Respondent Exhibits 4 & 5). For instance, on December 11, 2015, Miller emailed Engelin regarding an open CSO position in Scranton. (Respondent Exhibit 4). Miller further filed an unfair labor practice charge on Farrell's behalf to attempt to enforce the settlement agreement. (Respondent Exhibits 6 & 7; Miller, 180: 2-4; 182: 16-23). In 2016, the Employer advised Kamage that he had to re-hire Farrell under the terms of that settlement agreement. (Tr, Kamage, 22: 2-3).

Prior to Farrell's return in October 2016, Kamage posted a new seniority list. Wigley and Reuther told Kamage he could not post the list because Farrell was not getting his seniority back. Kamage indicated that Reuther had received his past seniority. (ALJ Decision, at 9). Either Wigley or Reuther told Kamage that they had checked with the International and that it was a different issue. (Kamage, 22: 12-19).

When the Local learned that Farrell was inquiring about his seniority prior to his return, the Local contacted Miller for an evaluation. (Tr, Wigley, 214: 7-17). At hearing, Miller explained that Farrell did not meet the

qualifications for reinstatement of seniority under the collective bargaining agreement. (Tr, Miller, 188: 16-19). Miller opined that getting better from an injury did not constitute "overturning" a medical disqualification under Article 2, Section 2.3(A) of the contract since to overturn a medical disqualification a CSO had to prove that the testing was flawed at the time of the removal determination. (Tr, Miller, 188: 20-25).[13] Miller believed that Farrell, instead, fell under the terms of Article 2, Section 2.2(E) of the collective bargaining agreement. (Tr, Miller, 190: 2-5). Farrell was transferred out of the unit when he was no longer medically qualified to perform his job as a CSO and, thereafter, was no longer a member of the bargaining unit. (Tr, Miller, 190: 2-8; 191: 9-12).

Miller recalled that he discussed with Wigley and Reuther the lack of a mechanism in the collective bargaining agreement to reinstate seniority after a lengthy separation. Miller related his interaction with Reuther and Farrell regarding the reinstatement of Reuther's seniority in 2013. Miller had received communications from Farrell indicating that the collective bargaining agreement did not authorize the reinstatement of Reuther's seniority and that the reinstatement of Reuther's seniority was done without the participation of the Local and without the opportunity for the Local to vote on the matter. (Tr, Miller, 185: 1-25).

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[13] CSOs have limited options to appeal medical disqualifications. After an initial examination, a CSO has an opportunity to take a secondary test. If the CSO fails the secondary test, the CSO can go to his or her treating physician or another agent to show that an improper determination was made. (Tr, Miller, 169: 16-25; 170: 1- 25).

At hearing, Miller indicated that he had taken a "long shot" in arguing that Reuther overturned a medical disqualification in 2013. According to Miller, he would have had no standing to make the argument if the Employer protested. (Tr, Miller, 186: 1- 25). At hearing, Miller explained that in Reuther's case, he used his relationship with the Company to do something that the collective bargaining agreement did not support because, at the time, he thought it was the right thing to do. However, based on feedback from the Local, it became abundantly clear to him that he had not acted in the Local's best interests. (Tr, Miller, 187: 1-17). Miller felt that he could not advocate for the return of Farrell's seniority based on the language of the collective bargaining agreement and the content of the 2015 settlement agreement. Miller told Wigley and Reuther to ask the membership if they wanted to modify the collective bargaining agreement so that he could advocate for Farrell if he was authorized to do so. (Tr, Miller, 188: 1-5).

As a result of Miller's recommendation, the Local took a membership vote on October 12, 2016. The vote was announced by word of mouth. (ALJ Decision, at 9). Ballots stating "Reinstate Seniority for Joe Farrell" with "yay" or "nay" options were placed in a sealed box and CSOs would check off their names as they cast their ballots. (Tr, Wigley, 216: 14-18; Respondent Exhibit 8). Wigley understood that following an affirmative vote, the Local would have to modify the collective bargaining agreement to allow for the return of Farrell's seniority. (Tr, Wigley, 214: 18-23; Reuther, 158: 21-25; 159: 1-7).

Farrell began working as a CSO again on October 13, 2016 and was not returned to his prior senior LCSO. Farrell submitted a letter to Kamage and also sent a copy to Miller regarding his seniority. (Tr, Farrell, 92: 2-25). Farrell's letter stated, in part,

> 4. As a result of a grievance settlement agreement of September 15, 2015, I was rehired and returned to work on October 13, 2016.
>
> 5. Pursuant to Article 2, Section 2.3 of the collective bargaining agreement, an employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.

(General Counsel Exhibit 15). On October 16, 2013, Farrell also forwarded Miller a series of emails regarding the reinstatement of Reuther's seniority in 2013 and Farrell's prior objection to it as contrary to the collective bargaining agreement. (General Counsel Exhibit 16).

On November 3, 2016, Miller provided a written opinion about Farrell's seniority to the Local copying Farrell so that the Local could share the evaluation with the bargaining unit. (Tr, Miller, 187: 1-8; Farrell, 95: 4-15; General Counsel Exhibit 17). Miller's letter stated, in part,

> In October 2016, you contacted me for background and guidance regarding the request for Seniority and Anniversary date reinstatement of returning CSO Joseph Farrell. . . .
>
> The Executive Board was advised that neither the Settlement Agreement nor the CBA allow reinstatement of the Seniority Rights and or Anniversary Date of the returning member. The Executive Board was asked to address the matter with the Membership to see if the Membership expressed interest in having me attempt to modify the terms and conditions of the Collective Bargaining Agreement to attempt to make a case for reinstatement of Status and/or benefits. The Executive Board accomplished this endeavor reporting that the Membership did not desire to alter the terms

> and conditions of the CBA at this time and would adhere to the requirements of the CBA and the Executed Settlement Agreement.
>
> Through separate conversations, returning CSO Joseph Farrell communicated with me a similar situation occurring in 2013 when I took independent action in good faith to assist a returning CSO (Robert Kevin Reuther) in an attempt at reinstatement of benefits. That resulted in the reinstatement of that Members Union Seniority Date only and was strongly opposed by the Executive Board at the time which included CSO Joseph Farrell.
>
> It can clearly be established that the action taken in 2013 was an exceptional event not supported by the CBA, any Executed Settlement Agreement, or the Executive Board of UGSOA Local 129 to include CSO Joseph Farrell.

(General Counsel Exhibit 17). Miller testified that it was his personal position that an employee on worker's compensation leave should not be terminated or lose benefits prior to being counseled by Farrell in 2013 that his position was incorrect and not supported by the Local or the collective bargaining agreement. (Tr, Miller, 207: 7-11). Miller acknowledged that he made a mistake in asking for Reuther's seniority back. (Tr, Miller, 208: 1-17).

The ALJ erroneously discredited Miller's testimony regarding Respondent's interpretation of the collective bargaining agreement based largely on his finding that Miller "seemed unduly argumentative and even inconsistent when he explained that he could not represent Farrell because he was not in the unit when Respondents did in fact represent Farrell in the grievance over his removal from the contract." (ALJ Decision, at 11). In accusing Miller of being "unduly argumentative" at hearing,[14] the ALJ is

[14] Before counsel could even question Miller regarding Respondents' interpretation of the collective bargaining agreement, the ALJ interrupted direct examination asking counsel to point him to the language of the collective

apparently referring to an exchange where the ALJ himself interrupted Miller's testimony to accuse him of being inconsistent:

> BY MS. TISDALE: Isn't it true that your argument, your position is that an employee should never be fired while on workers' compensation?
>
> A. My opinion. I actually attempted to try to get that in a CBA recently and had the local reject it, and the employer as well.
>
> Q. Okay. But that is your opinion; he shouldn't end -- be terminated?
>
> A. Of course, I want to advocate for my members. But I have a bible I have to follow.
>
> JUDGE GIANNASI: Well, apparently, your testimony about Farrell was inconsistent with that.
>
> THE WITNESS: I don't know how you get that.
>
> JUDGE GIANNASI: Well, you testified that you considered -- in answer to your counsel's question, that you considered him terminated under the collective bargaining agreement.
>
> THE WITNESS: He considered himself terminated in numerous documents. I don't believe there's a reference to termination.
>
> JUDGE GIANNASI: Well, this – you're testifying on behalf of the Union and that was –
>
> THE WITNESS: My testimony was that he was removed from the bargaining unit; therefore, he had no connection to this collective bargaining agreement for over a year. How can I represent people that are not under my jurisdiction and give them rights over members that are paying dues, are – they're working, and they're supported by the CBA.

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bargaining agreement and dismissed Miller's assessment of that language, before he could even testify regarding it, as "not as significant." (Tr, Miller, 173: 4-15). Counsel explained that it was Respondents' position that Farrell was either terminated by the Employer falling under Article 2, Section 2.2(B) or permanently transferred out of the bargaining unit by the Employer under Article 2, Section 2.2(E). (Tr, 174: 1-25; 175: 1-25). See infra note 21.

> JUDGE GIANNASI: Well, that's, that's – well, that's different than your testimony. Your testimony was –
>
> THE WITNESS: That's the exact testimony.
>
> JUDGE GIANNASI: --he was – your testimony is that he was terminated, and you believe that he was terminated, so –
>
> THE WITNESS: I never said that he was terminated. I said he was removed from the contract. He was no longer a CSO.
>
> JUDGE GIANNASI: Well, your counsel asked you whether he was discharged for cause or permanently transferred out of the bargaining unit, and you answered yes to both questions.

(Tr, Miller: 204: 21-25; 205: 1-25; 206: 1-7). Miller, however, did not give inconsistent testimony as asserted by the ALJ. He testified that Farrell fell under Article 2, Section 2.2(E) of the collective bargaining agreement losing his past seniority when he was permanently transferred out of the bargaining unit. (Tr, Miller 190: 1-25). During one of the ALJ's earlier interruptions, it was counsel for Respondents who explained that it was Respondents' position that Farrell was either terminated by the Employer under Article 2, Section 2.2(B) or permanently transferred out of the bargaining unit by the Employer under Article 2, Section 2.2(E). (Tr, 174: 1-25; 175: 1-25).

On November 7, 2016, Frank Tunis, an attorney representing Farrell, wrote to the Employer and Respondents regarding Farrell's seniority. (General Counsel Exhibit 19). On December 2, 2016, Siri Chand Khalsa, Esq., General Counsel for the Employer, responded that the Company would not "publish a change to the seniority list unless we have notification from the union that they wish for a change to be made." (General Counsel Exhibit 20).

On January 23, 2017, Tunis sent a second letter to Miller writing, in part, "I received a telephone call from you at which time you informed me that Mr. Farrell's employment with AKAL Security was TERMINATED for cause, and that the Union had no further interest in pursuing the matter on behalf of Mr. Farrell[.]" (General Counsel Exhibit 20).[15] On January 23, 2017, Miller replied to Tunis by email indicating,

> The Local and International operate under the collective understanding that pursuant to the Collective Bargaining Agreement on January 14, 2015 CSO Farrell was separated from the bargaining unit, pursuant to Section 2.2 E. The International processed a grievance regarding that separation which resulted in a Settlement Agreement defining the certain terms and conditions of a return. That Agreement did not invoke any additional remedies other than the ability to re apply with preferential consideration. Once reinstated his Seniority was Granted consistent with the Collective Bargaining Agreement and his subsequent re-hire as a CSO.

(General Counsel Exhibit 20).

Although the Employer flatly refused to restore Reuther's benefit seniority in 2013, the Employer granted Farrell his past benefit seniority. (Tr, 175: 8-17). Respondents did not protest this grant even though Miller's similar request that Reuther be granted benefit seniority had been denied by the Employer as described supra 6.

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[15] The ALJ credited the hearsay contained in Tunis' letter, indicating that Miller told Tunis that Farrell was terminated for cause by the Employer, citing it as an example of Miller's inconsistency. The ALJ's determination was clearly erroneous. First, Tunis was not called at hearing to testify about his conversation with Miller. Second, Miller immediately responded to Tunis's claim by indicating that Respondents believed Farrell was permanently transferred from the bargaining unit under Article 2, Section 2.2(E). Further, Farrell consistently referred to himself, as demonstrated by his communications with Respondents during the grievance process, as having been terminated. (See General Counsel Exhibit 14).

III. APPLICABLE LAW

"The duty of fair representation refers to the Union's 'statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.'" Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017). "Union actions are arbitrary only if [the union's conduct] can be fairly characterized as so far outside a 'wide range of reasonableness,' that it is wholly 'irrational' or 'arbitrary.'" Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017). "Discrimination refers to racial and gender discrimination as well as other distinctions made among workers, including lack of union membership." Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017). "A union acts in bad faith when it acts with an improper intent, purpose, or motive," and "[b]ad faith encompasses fraud, dishonesty, and other intentionally misleading conduct." Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017).

"[I]t is well settled that a union's refusal to process a grievance does not violate the duty of fair representation where the union acted pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation regarding the merits of the complaint." General Motors Corp., 331 N.L.R.B. 479 (2000). "In evaluating whether the union's conduct in such cases breached the duty of fair representation, the Board's responsibility 'is not to interpret the pertinent contract provisions and determine whether the Union's interpretation of the contract] was correct. Rather, [its] responsibility is

to determine whether the Union made a reasonable interpretation . . . or whether it acted in an arbitrary manner.'" General Motors Corp., 331 N.L.R.B. 479 (2000).

IV. ARGUMENT

1. The ALJ Erred In Failing To Find That The Allegation Regarding Farrell's Seniority Was Not Time Barred.

Foremost, the evidence clearly demonstrates that the ALJ erroneously rejected Respondents' defense that the allegations regarding Farrell's seniority should be dismissed as untimely (Exception 1). The ALJ's rejection of Respondents' defense was premised upon his inaccurate conclusion that Respondents first raised timeliness in their post-hearing brief. (ALJ Decision, at 22: n.17). In contrast to the ALJ's conclusion, Respondents raised the timeliness defense in their answer to the complaint:

> Second Defense
>
> To the extent any allegations were not made and expressly included in an unfair labor practice charge filed within six (6) months of the alleged violation, the allegations are time-barred by the applicable six-month statute of limitations.

(General Counsel Exhibit 1(e)). The ALJ did not permit opening statements at hearing and the Respondents again raised the timeliness defense asserted in their answer to the complaint in their post-hearing brief. While timeliness is an affirmative defense, Respondents appropriately asserted that defense and have maintained that defense throughout these proceedings.

Here, Respondents timely raised the timeliness defense and the evidence clearly shows that Farrell first became aware and challenged Respondents'

failure to seek restoration of his seniority well outside the six-month period available to file an unfair labor practice charge. "Section 10(b) states that no complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." Alternative Services, Inc., 344 N.L.R.B. 824, 825 (2005). The 10(b) period begins to run when the aggrieved party has received actual or constructive notice of the conduct that constitutes the alleged unfair labor practice. Concourse Nursing Home, 328 N.L.R.B. 692, 694 (1999).

Farrell had clear notice that Respondents would not seek reinstatement of his seniority in September 2015 when Respondents resolved the grievance regarding his January 2015 removal from the bargaining unit. On May 13, 2015, Farrell emailed the International suggesting certain conditions for the resolution of his grievance including that his "seniority would be reinstated in that it would be considered over turning a medical qualification[.]" (General Counsel Exhibit 12). Thereafter, Farrell received a copy of the settlement agreement on September 16, 2015, providing for his return to work to a vacant position when such a position became available, rather than his former position as senior LCSO, upon Farrell repeating the application process. The settlement agreement made no provision for the restoration of Farrell's seniority and, in fact, explicitly provided that the terms of the agreement satisfied all make-whole obligations owed to Farrell: "The parties recognize, understand and agree that by the above described actions, Akal has fully

satisfied all of its reinstatement and make whole obligations." (General Counsel Exhibit 2).

On September 16, 2015, after reviewing the terms of the settlement agreement, Farrell emailed the International expressly noting his dissatisfaction with the settlement agreement because it failed to provide for the reinstatement of his seniority, writing in part, "I do not agree with this resolution . . . . Further, we had discussed seniority upon return, similar to that obtained for Robert Reuther." (General Counsel Exhibit 14). Farrell further testified at hearing that Respondents had ignored his request for seniority. (Farrell, 90: 11-13). On September 17, 2015, Kapitan, the then counsel for the International, responded to Farrell's protestations indicating that Respondents "have done all we can for you in this case" and indicating that there was no appeals process regarding the decision. (General Counsel Exhibit 14). Farrell responded to Kapitan by email on September 17, 2015, continuing to protest Respondents' actions, writing, "I respectfully disagree that the Local and International Unions had done all they could for me on this case." (General Counsel Exhibit 14).

Thus, as of September 17, 2015, Farrell had clear notice that Respondents would not seek reinstatement of his seniority upon his return to work.[16] As the ALJ concluded in his decision, the 2015 grievance was the

[16] Farrell was already medically cleared to work at that time. (Tr, Farrell, 223: 15-19). Thus, the lack of seniority upon his reinstatement posed an immediate concern to Farrell in September 2015. Farrell had applied for positions to return to work by that time. (Tr, Kamage, 21: 14-24). That Farrell continued to push the seniority issue because he was unsatisfied with the

proceeding in which Respondents "could have addressed the matter [of Farrell's seniority], but did not[.]" (ALJ Decision, at 27). Farrell filed his unfair labor practice charge challenging Respondents' actions with respect to the reinstatement of his seniority on February 1, 2017 (General Counsel Exhibit 1(a)) well more than a year after he first learned that Respondents would not seek reinstatement of his seniority.

For the reasons set forth above, the Board should grant Respondents' exception and dismiss the allegation that Respondents violated Section 8(b)(1)(A) with respect to the reinstatement of Farrell's seniority. Farrell filed his unfair labor practice charge contesting Respondents failure to seek reinstatement of his seniority far outside the six-month window for filing such a charge, which began, at the latest, on September 17, 2015.

2. The ALJ Erred In Concluding That Respondents Violated Section 8(b)(1)(A) By Failing To Act Regarding Farrell's Seniority On The Merits.

The ALJ erroneously concluded that Respondents violated Section 8(b)(1)(A) by failing to restore Farrell's union seniority for arbitrary and discriminatory reasons including Farrell's internal union activities (Exception 2). The ALJ's decision is predicated upon multiple inaccurate factual and credibility findings. The ALJ largely premised his decision that Respondents violated Section 8(b)(1)(A) regarding Farrell's seniority on his conclusion that

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outcome through October 2016 when he returned to work does not serve to show that Farrell did not have clear notice that Respondents would not be seeking reinstatement of his seniority, whenever he happened to successfully apply for a vacant position, in September 2015.

(1) Farrell underwent no change in his employment status impacting his seniority under Article 2, Section 2.2 (ALJ Decision, at 18-19) and (2) his rejection of Miller's testimony regarding Respondents' reasonable interpretation of the collective bargaining agreement (ALJ Decision, at 11-12, 19-20). In reaching the conclusion that Farrell simply returned from a medical leave, not in any way implicating his employment status, the ALJ ignores a record replete with evidence showing that Farrell was no longer employed as a CSO within the bargaining unit for an extended period of time.

Further, the evidence shows that Miller gave credible testimony demonstrating that Respondents acted based upon a reasonable interpretation of the collective bargaining agreement (Exception 3). While Miller had assisted in restoring Reuther's union seniority in 2013, the evidence shows that Farrell himself, then a union official and acting on behalf of the Local, rebuked Miller and championed the interpretation of the collective bargaining agreement that has been adopted by Respondents as a result. Below, Respondents will first review the ALJ's multiple erroneous factual and credibility findings and then address Respondents' reasonable interpretation of the collective bargaining agreement.

A. The ALJ Improperly Concluded That Farrell's Seniority Remained Intact Following His 2015 Removal From His CSO Position.

In reaching his conclusion that Respondents violated Section 8(b)(1)(A), the ALJ steadfastly maintains that Farrell underwent no change in his employment status in January 2015 and simply returned, in October 2016,

from a medical leave. This conclusion, utterly unsupported by the evidence, likely flows from a tortured effort to avoid finding that Farrell lost his seniority[17] in January 2015 under Article 2, Section 2.2 of the collective bargaining agreement (Exceptions 7 & 8) when he was permanently removed by the Employer from his CSO position.[18]

Such a finding ignores the overwhelming evidence showing that Farrell was removed from his CSO position entirely, and was not merely out of work on a leave, as of January 2015. At the time of his removal, Farrell held a position as the senior LCSO. (Tr, Farrell, 92: 2-25). Farrell did not simply return to his position when he was medically capable of performing his job. Rather, Farrell had to re-apply when a vacant position became available and

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[17] Farrell himself apparently acknowledged his loss of seniority under Section 2.2 and sought its restoration when he was "rehired and returned to work" under Section 2.3 of the collective bargaining agreement. (General Counsel Exhibit 15).

[18] Whether employing the phrase "transferred," "removed," or "terminated," Respondents have consistently acted with the understanding that Farrell had been constructively discharged from his position as a CSO within the bargaining unit for other than disciplinary reasons and no longer held a position in the bargaining unit. The evidence clearly demonstrates that Farrell did not hold a position as a CSO and was not a part of the bargaining unit for over a year. Throughout the grievance process and at hearing, the Employer maintained that Farrell was removed from the contract but somehow remained an employee of the Employer. Respondents posit that the Employer employed mere semantics concerning Farrell's removal in January 2015 perhaps to avoid legal consequences for taking an adverse employment action against an employee on worker's compensation leave because of an on-the-job injury. No evidence exists to suggest that the Employer offered Farrell work of any nature during the period of time he was removed from the bargaining unit. Farrell was required to re-apply and re-pass the screening process to obtain a new, vacant position under the contract when he was medically capable of returning to work. While the Employer, here, voluntarily restored benefit seniority for the litigious Farrell, it has never granted Reuther his past benefit seniority and explicitly refused to do so.

was re-hired by Akal under the contract contingent upon him qualifying for that vacant position. (Tr, Kamage, 53: 10-15; 54: 1-8).

Had Farrell failed to re-pass the certification process, nothing exists to suggest that Farrell would ever have returned to work as a CSO under the contract. Indeed, Farrell testified that he was medically cleared to return to work in April or May of 2015. Farrell was not immediately reinstated to his position and was not even selected for vacant positions at that time although he applied in June 2015 and September 2015.[19] (Tr, Farrell, 223: 15-19; Kamage, 21: 14-24). Only with Respondents' intervention in enforcing the settlement agreement did Farrell return to work in October 2016 in a new CSO position. Although the Employer maintained that Farrell was still an employee of the Employer, in some unknown position and in some unknown status, the evidence shows that Farrell was constructively discharged from his CSO position and no longer a member of the bargaining unit.[20] Entirely unlike an

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[19] Without the guarantees of the settlement agreement reached by the Respondents, which Respondents vigorously enforced, it is not clear that the Employer would have ever selected Farrell for a vacancy. Kamage was apparently avoiding re-hiring Farrell despite the existence of numerous vacancies for which Farrell was not hired until the International interceded on his behalf.

[20] The evidence shows that Farrell was "permanently" removed from the bargaining unit within the meaning of Article 2, Section 2.2(E). Farrell had no right to return to employment within the bargaining unit whatsoever absent his re-hiring into a new position, after completing a new application process, by the Employer. There was no assurance that Farrell would ever successfully re-apply for a position. Without applying and completing the hiring process, in the same manner as a new employee without any employment connection to the Employer, Farrell would have remained without a CSO position.

employee returning to work after a medical leave, Farrell could not return to work until he re-applied and was re-hired into a vacancy.

B. The ALJ Erroneously Found That Farrell Was Exempt From The Annual Physical Requirement While On Worker's Compensation Leave.

Given the ALJ's steadfast determination to conclude that Farrell's employment status was in no way impacted by his January 2015 removal, the ALJ went so far as to find that Farrell was excused from his annual medical evaluation because he was on worker's compensation leave. Such a conclusion is entirely unsupported by the record, including the portions of the transcript the ALJ cites as a basis for his finding (Exception 9).

Kamage and Miller's uncontradicted testimony establishes that the Marshal Service's requirement for an annual physical cannot be waived and employees remained subject to that requirement even while on worker's compensation leave. (Tr, Miller, 172: 11-14; Kamage, 53: 10-12; 55: 24-25; 56: 1-6). Farrell did speak to Kamage about the physical, but rather than waiving the physical requirement, Farrell was told that he "wouldn't be allowed to take a physical[.]" (Tr, Farrell, 80: 11-18). During the grievance process, Farrell's communications show that he understood Kamage's response to constitute a refusal rather than any waiver of the requirement. (See General Counsel Exhibit 14) ("AKALS refusal to provide me with my annual medical examination, and then terminate my employment under the contract based on that lack of examination, certainly flies in the face of the letter and spirit of the CBA. . . .").

Prior to Farrell's removal from the contract, Kamage documented that Marshal Service's concerns about Farrell's lack of physical by email and the Marshal Service disqualified Farrell from working under the security contract (General Counsel Exhibit 25; Tr, Kamage, 51: 11-21; 55: 19-22; 57: 1-6). Farrell's January 2015 removal letter explicitly indicated that Farrell was being removed from his position because he was no longer qualified due to the lack of annual examination. (Respondent Exhibit 1). Contrary to the ALJ's finding, the evidence presented at hearing overwhelmingly and explicitly shows that Farrell was removed from his CSO position, and the bargaining unit, because he did not take an annual physical and that the physical requirement was not, and could not have been, waived by the Employer.

C. *The ALJ Erred In Finding That It Took Farrell A Year, Following September 2015, To Become Medically Cleared And For A Vacant Position To Become Available.*

Similarly, the ALJ concluded that it took a year from September 2015 for Farrell to become medically cleared and for a vacant position to become available. Presumably, the ALJ reached that incorrect finding (Exception 10), despite clear, uncontradicted evidence to the contrary presented by the General Counsel's witnesses, because such a conclusion was necessary to support the premise that Farrell simply returned from a medical leave in October 2016 without disruption to his employment status.

Farrell was medically cleared and vacant positions became available even prior to the execution of the September 2015 settlement agreement. Farrell

was medically cleared to return to work in April or May of 2015. (Tr, Farrell, 223: 15-19). Kamage reopened applications for the Scranton location in June 2015 and Farrell applied for a position. (Tr, Kamage, 21: 14-24). Farrell again applied for a position sometime in September 2015. (Tr, Kamage, 21: 20-24). Between May 2015 and October 2016, the Employer filled multiple CSO vacancies hiring Joseph Gillott, June 18, 2015; Michael Martin, October 2, 2015; and John Colan III, June 20, 2016. (Joint Exhibit 10).

The ALJ's finding that Farrell required a year following September 2015 to obtain medical clearance and for a vacancy to become available is clearly unsupported by the record. Instead, Farrell was medically cleared well in advance of October 2016 and multiple vacancies existed for which the Employer declined to select Farrell. Presumably, the ALJ reached such a finding because the record evidence, that the Employer did not immediately re-hire Farrell upon his become medically qualified, contradicts his mistaken conclusion that Farrell simply returned from a medical leave in October 2016 without any impact upon his employment status.

D. The ALJ Improperly Discredited Miller's Testimony About Respondents' Actions On The Basis Of Miller Being "Unduly Argumentative" And Non-Existent Inconsistencies.

In finding that Respondents violated Section 8(b)(1)(A), the ALJ discredited Miller's testimony about Respondents' interpretation of the collective bargaining concluding that he was "unduly argumentative" and inconsistent. A review of the record, however, shows that Miller testified

consistently about the basis for Respondents' actions and that the ALJ made an inappropriate credibility determination. During the hearing, as set out in detail supra 19-21, the ALJ interrupted Miller's testimony and accused him of providing inconsistent testimony by stating both that Farrell was terminated and permanently transferred out the unit. Miller became "argumentative" in defending his position that he had not testified inconsistently.

A review of the record shows that Miller testified only that he considered Farrell to have been transferred out of the unit. (Tr, Miller 190: 1-25). During a prior interruption, the ALJ and counsel for Respondents had an exchange in which it became clear that it was Respondents' counsel, and not Miller, who expressed the opinion that Farrell was either terminated or permanently transferred from the bargaining unit based on the Employer's removal of Farrell from his CSO position. (Tr, 174: 1-25; 175: 1-25).[21] Concluding that Miller

[21] The evidence shows that Respondents have consistently treated Farrell as having been constructively discharged, regardless of whether he was "terminated," "removed," or "transferred." Confusion regarding Farrell's exact employment status is unremarkable given the Employer's refusal to acknowledge a change in his employment status. Further, although Miller may not have been aware of it, relevant arbitral case law has held that medical disqualification can, and has been, treated as just cause for termination even though not disciplinary in nature. See Rochdale Village, 125 LA 196 (2008) (finding that the employer terminated an employee who had three workers' compensation leaves and other medical leaves within a year for just cause where employee had two herniated discs and two recent medical evaluations found that employee remained totally disabled); Papercraft Corp., 85 LA 962 (1985) (applying just cause standard to termination of employees out of work with work-related injuries and finding that employer had just cause to terminate employees where employees in question were unable to return to work and could not provide medical information indicating when they would be able to return to work to the employer prior to their termination). Counsel for Respondents, thus, adequately observed that Farrell's removal from his CSO position and from the bargaining unit constituted a termination for cause

was unduly argumentative, based on his defense of his consistent testimony in response to the ALJ's attempted impeachment, constitutes an improper basis for drawing an adverse credibility finding (Exception 4).

While ALJs can certainly question witnesses to clarify testimony, ascertain credibility, and develop the record, they must refrain from impeaching or from examining witnesses to the extent that he takes out of the hands of either party the development of the case. Indianapolis Glove Company, 88 N.L.R.B. 986 (1950) (setting aside decision, even in the absence of finding inappropriate bias on the part of the ALJ, and remanding to the Regional Director for a new hearing); Better Monkey Grip Co., 113 N.L.R.B. 938 (1955) (finding that respondent did not have a complete and impartial hearing where in cross-examining witnesses the trial examiner assumed the role of advocate in attempting to impeach their prior testimony and during respondent's case in chief cut off lines of inquiry). Here, the ALJ's questioning constituted nothing short of an attempt to impeach Miller's prior statements.

The ALJ further contended that Miller was inconsistent in stating he could not advocate for Farrell because he was not a part of the bargaining unit in relation to his seniority although Respondents pursued a grievance regarding his removal. It is clear from the context that Miller was commenting, as he had explained in his testimony, that he could not support the restoration of Farrell's seniority based on the language of the collective bargaining

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under Article 2, Section 2.2(B) pursuant to relevant arbitral case law. In sum, Miller testified consistently as to his view of the case and the ALJ erroneously interwove the comments of counsel and the comments of Miller to, equally erroneously, conclude his testimony was "inconsistent."

agreement which would have impacted the rights of other bargaining unit members. (Tr, Miller, 204: 21-25; 205: 1-25). Miller's testimony on that point clearly related to his explanation as to why he did not follow his personal belief that no employee should be discharged while on worker's compensation.[22] (Tr, Miller, 187: 9-17). Miller explained at hearing that he had previously, and mistakenly, acted on that belief with respect to Reuther in 2013 but was admonished by Farrell, who was acting on behalf of the Local, that he was acting contrary to the collective bargaining agreement. As documented in the evidence, the Local, through Farrell, had previously instructed Miller not to act based on that belief. (See General Counsel Exhibit 16; Tr, Miller, 187: 9-17).

To strengthen his rejection of Miller's testimony, the ALJ also improperly credited hearsay in his decision (Exception 6). Based on a statement written by Tunis in a letter, the ALJ found that Miller told Tunis that Farrell had been terminated for cause. (General Counsel Exhibit 20). Crediting that hearsay statement to discredit Miller was clearly erroneous. Counsel for the General Counsel did not call Tunis as a witness at hearing to offer live testimony about the conversation. For his part, Miller immediately refuted Tunis' claim in an email responding to Tunis writing that Farrell was separate from the bargaining unit pursuant to Article 2, Section 2.3(E) (General Counsel Exhibit

[22] Miller's belief about worker's compensation was raised when Counsel for the General Counsel questioned Miller related to an email, (see General Counsel Exhibit 29) ("The prime issue is that he should have never been fired by MVM, Inc while on Workman's Compensation for an in the line of duty or on the job injury[.]"), he sent to Dolan when addressing the Reuther seniority issue in 2013 prior to his being rebuked by the Local, through Farrell, for acting contrary to the terms of the collective bargaining agreement. (Tr, Miller, 204: 21-25; 187: 9-17).

20). While Miller did not testify about his conversation with Tunis, he testified consistently at hearing that he believed Farrell's situation fell under Article 2, Section 2.2(E). The ALJ erred in crediting hearsay, unsupported by the record, to discredit Miller's testimony.

Further, the ALJ chose to discredit Miller's testimony that his treatment of Reuther's seniority was a mistake calling that assertion a convenient, after-the-fact excuse (Exception 5). However, in reaching that conclusion, the ALJ failed to discuss or even note important facts. As Miller explained credibly at hearing, following his efforts on Reuther's behalf, the Local, through Farrell, admonished him harshly for obtaining the restoration of Reuther's union seniority. (General Counsel Exhibit 16; Tr, Miller, 185: 1-25; 187: 1-17).[23] Although Reuther thereafter sought his benefit seniority, a grievance on that subject was not pursued to arbitration. (ALJ Decision, at 5). In his November 2016 opinion regarding Miller's seniority, Miller addressed the return of Reuther's seniority in 2013 as unsupported by the collective bargaining agreement and "opposed by the Executive Board at the time which included CSO Joseph Farrell." (General Counsel Exhibit 17). Miller did not concoct his testimony about the return of Reuther's seniority to support a litigation position; rather he has acted consistently with that position throughout

[23] Miller, for his part, made Reuther confirm that the other employees impacted had no objection to the restoration of his seniority prior to Miller seeking it. (Joint Exhibit 8). Presumably, Miller would not have done so if the collective bargaining agreement clearly provided for the restoration of Reuther's seniority.

assessing the status of Farrell's seniority.[24] In light of the above, the ALJ has inappropriately discredited Miller's testimony and the Board should now reverse those credibility findings.

E. The Evidence Shows That Respondents Acted Based On A Reasonable Interpretation Of The Collective Bargaining Agreement Regarding Farrell's Past Seniority.

The evidence presented demonstrates that Respondents acted regarding Farrell's seniority based entirely upon a good faith interpretation of the language of the collective bargaining agreement. That interpretation reflects Farrell's own position as to the meaning of the collective bargaining agreement, which he communicated to Miller on behalf of the Local in 2013. When the Local learned that Farrell was questioning his seniority prior to his return to work in October 2016, the Local contacted the International for advice. (Tr, Wigley, 214: 7-17).

At hearing, Miller explained that he conducted an evaluation of Farrell's seniority. As set out in his November 3, 2016 letter, Miller reviewed the language of the collective bargaining agreement determining that it did not support a return of Farrell's seniority. (Tr, Miller, 188: 16-25). Miller also

[24] The ALJ contends that Respondents denied Farrell's seniority to protect the grant of seniority to Reuther in 2013. (ALJ Decision, at 20: 39-41). Such an assertion does not make sense. Miller has put in writing, for the Local bargaining unit, that the grant of Reuther's seniority was unsupported by the collective bargaining agreement. (General Counsel Exhibit 17). Presumably, any member less senior to Reuther now has grounds to challenge Reuther's seniority. Further, whether or not Farrell was granted seniority, Farrell would have been less senior to Reuther, because Reuther was both hired prior to Farrell and re-hired prior to Farrell, so granting Farrell seniority would not have impacted Reuther.

evaluated the 2015 settlement agreement reached as a result of Farrell's removal. Miller concluded that the agreement failed to provide any rights above and beyond the language of the collective bargaining agreement entitling Farrell to reinstatement of his seniority upon his return to work. (Tr, Miller, 187: 1-8; 188: 1-5; General Counsel Exhibit 17).

Article 2 of the contract pertains to the loss and restoration of seniority. At hearing, Miller explained that Farrell's removal from the contract fell under Article 2, Section 2.2(E) providing for loss of seniority when an "Employee is permanently transferred out of the bargaining unit." As set out above, as of January 2015, the Employer had removed Farrell from his position as a CSO. At that time, the Marshal Service maintained a requirement that CSOs undergo an annual physical examination. The Marshal Service notified the Employer that it was in violation of its contract with the Marshal Service on account of Farrell's failure to undergo a yearly medical examination. As a result, the Employer removed Farrell from the contract, from his position as a CSO, and from the bargaining unit. Miller's interpretation of Article 2, Section 2.2(E) as encompassing Farrell's situation was entirely reasonable[25] under the circumstances where Farrell no longer held a position as a CSO, was no longer a part of the bargaining unit, and was required to re-apply to a new position to

[25] As noted supra note 20, Respondents were entirely reasonable in interpreting Farrell's removal as being "permanent." There was no assurance that Farrell would ever return to work as a CSO in the bargaining unit. Farrell had no right to return to employment within the bargaining unit whatsoever absent his re-hiring into a new position, after completing a new application process, by the Employer.

return to work under the contract.[26] (Tr, Miller, 188: 20-25; 190: 2-8; 191: 9-12; see supra Section IV(2)(A)-(C)).

In 2015, the International assisted Farrell in filing a grievance contending that he had been terminated without just cause after his removal from the contract. At that time, Crume, candidly conceded that he did not know exactly what had occurred with Farrell's employment. Despite the uncertainty, Respondents took action to contest Farrell's removal. Whether employing the phrase "transferred," "removed," or "terminated,"[27] Respondents have consistently acted with the understanding that Farrell was constructively discharged from his position as a CSO within the bargaining unit for other than disciplinary reasons and no longer held a position in the bargaining unit. The evidence clearly demonstrates that Farrell did not hold a position as a CSO and was not a part of the bargaining unit for over a year. As such, Respondents' interpretation of the language of the collective bargaining agreement, as resulting in Farrell's loss of his seniority upon his removal from

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[26] The ALJ found that Respondents offered no examples of the past application of Section 2.2(E). Reuther, however, lost his past seniority when he was removed from the bargaining unit and did not regain his seniority for a year following his re-employment in the bargaining unit. Farrell himself apparently acknowledged his loss of seniority under Section 2.2 and sought its restoration when he was "rehired and returned to work" under Section 2.3 of the collective bargaining agreement. (General Counsel Exhibit 15).

[27] Under Article 2, Section 2.2(B), discharge with cause similarly constitutes grounds for loss of seniority. As noted supra note 21, characterizing Farrell's removal as a termination for just cause is entirely consistent with relevant arbitral precedent concerning non-disciplinary terminations of employees related to on-the-job injuries.

the bargaining unit and CSO position, was entirely reasonable and based upon a good faith understanding of the contract.

At hearing, Miller further explained that Farrell did not meet the conditions for reinstatement of his seniority under Article 2, Section 2.3 upon his return to work. Miller, who had extensive experience overseeing and administering collective bargaining agreements covering CSOs, opined that getting better from an injury did not constitute "overturning" a medical disqualification under Article 2, Section 2.3(A) since in overturning a medical disqualification, a CSO must show that the testing was flawed at the time of the determination. (Tr, Miller, 188: 20-25). The General Counsel presented no evidence to the contrary. The CSO-001 form completed for Farrell upon his removal from his position and the Employer's selection of another employee to take that position, further demonstrates that Farrell was not simply "medically disqualified" based on the meaning of that term under the collective bargaining agreement. (General Counsel Exhibit 2).

While the ALJ, through his independent examination of the collective bargaining agreement, concluded that Article 2, Section 2.3(A) would have entitled Farrell to the restoration of his seniority, there is no record evidence to support that position.[28] Indeed, the evidence shows that Farrell himself did not consider his return to work as constituting the "overturning" of a medical

[28] The ALJ concluded that Article 2, Section 2.3(A) would be meaningless unless it applied to employee's returning from extended medical leaves. (ALJ Decision, at 19: n.14). However, the evidence shows that CSOs have an opportunity to challenge certain medical testing results. There is certainly a solid basis for differentiating circumstances involving challenges to medical testing from an employee's re-employment following a re-application process.

disqualification. During discussions preceding the settlement of his grievance, Farrell proposed to include language providing that his "seniority would be reinstated in that it would be considered over turning a medical qualification[.]" (General Counsel Exhibit 12). It is unclear why Farrell would have requested the inclusion of language in the settlement agreement providing that his removal be "considered" a medical disqualification if Farrell believed that he had been medically disqualified. Farrell, on behalf of the Local, had previously made clear to Miller that Reuther had not qualified for the restoration of his seniority by overturning a medical disqualification. (General Counsel Exhibit 16) ("Secondly you indicate: *Pursuant to Article 2 Section 2.3 of our current agreement, an Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.* I do not believe that Bob Reuther ever received a medical disqualification from the FOH or the USMS. I submit my belief that there was never a medical disqualification to overturn[.]").

In assessing Farrell's seniority, Miller also addressed the circumstances surrounding the return of Reuther's seniority in 2013. Miller acknowledged that the return of Reuther's seniority was not supported by the collective bargaining agreement[29] and "was strongly opposed by the Executive Board at the time which included CSO Joseph Farrell." (Tr, Miller, 185: 1-25; General Counsel Exhibit 17). Given the Local's explicit objection to the return of

[29] Reuther and Miller's text messages show that Miller was mistakenly under the impression that the Local supported his extra contractual efforts to restore Reuther's seniority. It was only after the Employer's grant of union seniority to Reuther fait accompli that Miller learned otherwise.

Reuther's seniority as contrary to the collective bargaining agreement and unsupported by any independent settlement agreement, Miller opined that it could not serve as a basis for supporting the reinstatement of Farrell's past seniority. (See General Counsel Exhibit 16). At hearing, Miller explained that he was bound by the terms of the collective bargaining agreement and the Local had previously interpreted the agreement as not permitting the restoration of past union seniority. (Tr, Miller, 207: 7-11; 208: 1-17).

Thus, where Respondents' actions with respect to the reinstatement of Farrell's seniority were grounded upon only a reasonable interpretation of the collective bargaining agreement, Respondents did not act improperly toward Farrell. Respondents had a legitimate interest in acting based upon that reasonable interpretation of the collective bargaining agreement, as had been consistently advocated by the Local, especially where the question of reinstating Farrell's seniority would impact the rights of other members of the bargaining unit. See General Motors Corp., 297 N.L.R.B. 31, 32 (1989) (finding that union did not violate Section 8(b)(1)(A) or 8(b)(2) by causing employer to assign employee to team receiving less overtime where action was based on legitimate union interests and in light of its interpretation of contract provisions) ("Thus, our responsibility here is not to interpret the pertinent contract provisions and determine whether the Union's interpretation of the national agreement and the local memorandum of agreement was correct. Rather, our responsibility is to determine whether the Union made a reasonable interpretation of the two provisions or whether it acted in an

arbitrary manner."); Central KY Branch 361, NALC, 2018 NLRB LEXIS 179 (ALJ Decision 2018) ("Similarly, a union does not violate the duty of fair representation where it refuses to file or process a grievance pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation as to the merits of the employee's complaint.") (finding that union did not violate its duty of fair representation when it did not process grievances over employer requiring employee to work beyond her medical restrictions and removing her from her reduced work schedule where its inaction was based on a good faith evaluation of the collective bargaining agreement); American Postal Workers Union, Local 566, 2008 NLRB LEXIS 31 (ALJ Decision 2008) (dismissing complaint based on the union's denial of a request of the Charging Party to change his work schedule for his personal convenience where ALJ found that the union was attempting to protect the interests of all members of the bargaining unit by assuring that the employer paid out schedule premium to employee performing work for suspended employee when it disapproved an employee's request for a schedule change to fill the position and where there was no evidence showing that denial of change was attempt to have the employer discriminate against the employee because of union activity or a lack of union activity).

In correcting an erroneous approach rejected by the Local in 2013 regarding the application of the collective bargaining agreement, Respondents did not fail in any obligation toward Farrell or any other impacted bargaining unit member. See UAW, Local No. 2333, 339 N.L.R.B. 105 (2003) (adopting

ALJ decision finding that union had rational and non-arbitrary reasons not to process employee's grievance where union and employer applied layoff protections based on unit seniority rather than hire date, even where a prior union had utilized hire date, and further finding that personal hostility toward employee did not taint decision not to process grievance); UAW, Local 167, 286 N.L.R.B. 1167 (1987) (finding no violation by the union where a bargaining committee member erroneously told Charging Party that she was not subject to the provisions of a new local seniority agreement resulting in Charging Party losing four months of seniority when she returned to the unit and where union refused to accept grievance on behalf of employee to restore seniority where there was no evidence that the committee person deliberately gave bad advice and noting at least three reasonable interpretations of the language at issue). Thus, the Board should grant Respondents' exceptions (Exceptions 2-12) and dismiss that allegation that Respondents violated Section 8(b)(1)(A) with respect to Farrell's seniority.

F. No Evidence Exists To Show That Respondents' Evaluation Of Farrell's Seniority Was Impacted By Farrell's Internal Union Activities.

The ALJ, in improperly concluding that Respondents' violated the duty of fair representation with regard to Farrell's seniority, found that Respondents were motivated by discriminatory considerations including Farrell's internal union activities and internal disagreements (Exceptions 2, 11, and 12).[30] While

[30] The record shows that the Local, while Farrell was a member of the Executive Board, did not support certain employees, including Reuther and

the record indisputably contains evidence of tension between Wigley, Reuther, and Farrell,[31] those disputes had no impact on the issue of Farrell's seniority. That is so because the Local deferred to the International's objective evaluation of the seniority issue based on the collective bargaining agreement and the 2015 settlement agreement. (Tr, Wigley, 214: 7-17). Even Farrell himself reached out to the International for guidance on the issue. (Tr, Farrell, 92: 2-25). Reuther was not an integral part of the Respondents' decision-making on Farrell's seniority (Exception 12); rather, Miller evaluated the matter and determined how it would be handled. (See Tr, Miller, 185: 1-25; Wigley, 214: 7-17). No evidence whatsoever exists to show that either the International, as a whole, or Miller, in particular, were adverse to Farrell for any reason including his engagement in union activities.

Simply, the record contains no evidence showing animus or hostility on the part of the International toward Farrell. In 2015, when he was removed

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Wigley, in processing a grievance concerning discipline issued for alleged time fraud, as described supra 7-8, prior to 2014. Despite the Local's inaction, discipline related to that incident has been removed from the employees involved. (ALJ Decision, at 3). Farrell's position as to that grievance apparently constitutes the internal union activity that the ALJ found had influenced Respondents' decisionmaking (Exception 11) regarding Farrell's seniority. (ALJ Decision, at 3: 35) ("The animosity described above carried over to the present dispute."). It is nonsensical to suggest that the International acted on Farrell's seniority on the basis of that remote-in-time grievance, resulting in no disciplinary consequences for the impacted employees, since Miller supported Farrell's position on it.

[31] Indeed, the record reflects significant interpersonal squabbles among various members of the bargaining unit unrelated to personal activities. (See, e.g.,Tr, Kamage, 67: 7-10) ("Oh, I mean these people are just at each other. This is a constant battle back and forth with them fighting over many things, many anonymous complaints. I've had five of them against me.").

from the contract, Farrell requested the assistance of the International in processing a grievance challenging the Company's actions. (Tr, Farrell, 81: 7-25). The International assisted Farrell in filing and processing a grievance resulting in a settlement agreement allowing for Farrell's return to work to a vacant position upon his successfully satisfying applicable qualification requirements. (General Counsel Exhibit 13). When Farrell faced difficulties in returning to a vacant position under that agreement, the International advocated for Farrell resulting in his return to work. In an effort to enforce the settlement agreement, Miller filed an unfair labor practice and aggressively pressed the Employer to honor the settlement agreement that the International negotiated on Farrell's behalf. (Tr, Farrell, 112: 1-10). (Tr, Miller, 179: 13- 25; 180: 2-4; 182: 16-23; Respondent Exhibits 4, 5, 6, and 7).

Upon his return to work in October 2016, Farrell communicated directly with Miller. Farrell did not indicate that Miller expressed any hostility or bias in those interactions. (Tr, Farrell, 92: 2-25). Even prior to his removal in 2015, the record shows the absence of animus between the International and Farrell. The ALJ has cited the Local's failure, while Farrell was serving as the Secretary/Treasurer, to process a grievance on behalf of multiple CSOs, including Wigley and Reuther, as the internal union activity allegedly motivating Respondents' actions in this case. (ALJ Decision, at 3: 35). Farrell, however, consulted with the International regarding that grievance and Miller supported Farrell in not processing the grievance. (Tr, Farrell, 78: 13-25; see note 29 supra). Since Miller agreed with Farrell, it is utterly nonsensical to

suggest that the International acted on Farrell's seniority on the basis of that remote-in-time grievance, resulting in no disciplinary consequences for the impacted employees.

Where no evidence exists to show that the International held any impermissible animus toward Farrell for discriminatory or arbitrary reasons and the International was solely responsible for assessing Farrell's seniority claim, the General Counsel has failed to show that Respondents acted based on discriminatory reasons related to Farrell's internal union activities or disagreements with the Local.[32] Under the circumstances, Respondents acted based on reasonable interpretation of the collective bargaining agreement and the Board should grant Respondents' exceptions (Exceptions 2-12) and dismiss that allegation that Respondents violated Section 8(b)(1)(A) with respect to Farrell's seniority.

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[32] That the Employer was willing to restore Farrell's union and benefit seniority does not show that Respondents acted with animus toward Farrell. The Employer, in responding to Farrell's attorney-initiated inquiry about his seniority, was not responding with respect to the best interests of the Respondents. Indeed, the Employer's position on the matter appears suspect given its refusal to restore Reuther's benefit seniority in 2013 in response to Miller's request. Reuther's benefit seniority was never restored and Respondents did not pursue that matter. No evidence exists to explain why the Employer took a different position regarding Farrell in 2016 as compared to Reuther in 2013. Unlike the Employer, Respondents were required to consider the interests of all the members of the bargaining unit as a whole in addressing Farrell's request. The return of Farrell's seniority would have impacted multiple bargaining unit members in a manner which Respondents, lead by Farrell's own interpretation of the contract, determined was not supported by the collective bargaining agreement.

V. CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Board grant its exceptions and reverse the ALJ's finding that Respondents violated Section 8(b)(1)(A) by violating the duty of fair representation with regard to the failure to act regarding the restoration of Farrell's past seniority.

Respectfully submitted,

On behalf of the United Government Security Officers of America International and its Local 129,

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Date: July 2, 2018

CERTIFICATE OF SERVICE

I, Kristen A. Barnes, hereby certify that I have on this day served by PDF email a copy of the foregoing Exceptions To The Decision Of The Administrative Law Judge On Behalf Of The United Government Security Officers of America And Its Local 129 and Brief In Support Of Exceptions To The Decision Of The Administrative Law Judge On Behalf Of The United Government Security Officers of America And Its Local 129 upon Patricia Tisdale, Esq., [Patrice.Tisdale@nlrb.gov] Field Attorney, NLRB Region 4, 615 Chestnut Street, Philadelphia, PA, 19106, Joseph Farrell [daytonajoefarrell@gmail.com], and David Wehrer [kdswehrer@verizon.net] by email.

Dated: July 2, 2018

/s/Kristen A. Barnes
Kristen A. Barnes